IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO. 668 OF 2005

Sahil Resorts, Agri Fields &
Farms Pvt. Ltd. Appellants

Vs.

Suman Resorts India Ltd. & ors. Respondents

Mr.N.V.Walwalkar with Mr.N.V.Gangal i/b. Vimadalal
& Co. for appellants.

Mr.Banzin Somandy with Mr.Vinod Jawal for Resp.No.1.

Mr.Sameer Sawant i/b M/s.Little & Co. for Resp.No.2.

Mr.T.N.Subramaniam for Resp.No.4.

CORAM: B.H.MARLAPALLE,J.
June 30, 2005.

JUDGEMENT :

1. Heard Mr.Walawalkar with Mr.Gangal for appellants and Mr.Somandy with Mr.Jawal for Respondent no.1, Mr.Sawant for Respondent no.2 and Mr.Subramaniam for Respondent No.4

2. Admit.

3. Respondent No.3 is a formal party. Other respondents waive service. By consent of the parties appeal is heard for final disposal at the admission stage itself.

4. Appellant no.1-Company came to be impleaded as Defendant No.3 in Short Cause Suit No.1248 of 2005 and the said Suit has been instituted by the present Respondent no.1. The present respondent nos.2 to 4 are Defendant Nos.1, 2 and 4 respectively. In the said Suit Notice of Motion no.1006 of 2005 has been allowed by the learned Judge of the City Civil Court at Mumbai by the impugned order dated 21-4-2005 and the appellant - original defendant no.3 is aggrieved by the said order.

5. In the main Suit the substantial reliefs prayed for are as under:

> "(a) That the Defendants and particularly the Defendant No.3 be restrained by an order of injunction of this Hon'ble Court from selling, disposing off, alienating, encumbering, parting with the possession or creating any third party rights in respect of the said suit plot situated at F.O.No.59, Sub-Plot No.1 & 2 of TPS No.1 of Tungrali, Lonavala on Survey No.118/1A, Sakhar Danda, Tungrali Village, Taluka Maval, Lonavala, especially until such time as the disputes between the Plaintiff and the Defendant No.1 under the said Memorandum of Understanding dated 25th June, 1997 are not fully and completely adjudicated upon.
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> (b) That this Hon'ble Court be pleased to appoint the Receiver of this Hon'ble Court as Receiver in respect of the suit plot situated at F.O.No.59, Sub-Plot No.1 & 2 of TPS No.1 of

Tungrali, Lonavala on Survey No.118/A, Sakhar Danda, Tungrali Village, Taluka Maval, Lonavala, and to take possession of the said suit plot on such terms and conditions as this Hon'ble Court deems fit and proper."

Whereas in the Notice of Motion the reliefs prayed for are as under:

"(a) That the Defendants and particularly the Defendant No.3 be restrained by an order of injunction of this Hon'ble Court from selling, disposing off, alienating, encumbering, parting with the possession or creating any third party rights in respect of the said suit plot situated at F.O.No.59, Sub-Plot No.1 & 2 of TPS No.1 of Tungrali, Lonavala on Survey No.118/1A, Sakhar Danda, Tungrali Village, Taluka Maval, Lonavala, especially until such time as the disputes between the Plaintiff and the Defendant No.1 under the said Memorandum of Understanding dated 25th June, 1997 are not fully and completely adjudicated upon.

(b) That this Hon'ble Court be pleased to appoint the Receiver of this Hon'ble Court as Receiver in respect of the suit plot situated at F.O.No.59, Sub-Plot No.1 & 2 of TPS No.1 of Tungrali, Lonavala on Survey No.118/1A, Sakhar Danda, Tungrali Village, Taluka Maval, Lonavala, and to take possession of the said suit plot on such terms and conditions as this Hon'ble Court deems fit and proper."

It is thus clear that the main Suit has been filed for an injunction until such time as the disputes between the plaintiff and the Defendant no.1 under the Memorandum of Understanding dated 25th June 1997 are not fully and completely adjudicated upon. The reliefs prayed in the Notice of Motion are the same

as the reliefs prayed in the main Suit. It must also be noted that the reliefs sought for are only in respect of the plot and not the Hotel and other property standing on the said suit plot. No declaration has been sought against the sale deed dated 22-12-1994, though leave under Order II Rule 2 of C.P.C. has been applied for.

6. The operative part of the impugned order regarding the reliefs granted reads as under:

> "1. All the parties are restrained from in any manner dealing with, disposing of, selling alienating, encumbering or parting with possession of or creating any third party rights in the suit property being plot situated at Final Plot No.59, Sub-plot No.1 & 2 of TPS No.1 of Tungrali, Lonavala on survey No.118/1A, Sakhar Danda, Tungrali village, Taluka Maval, Lonavala, until the criminal prosecution against the sister concern of the plaintiff Suman Motels Ltd. is disposed of and the investors in that case are fully paid off by the Special Court under the MPID Act.
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> . It is clarified that defendant No.3 is restrained from putting up any construction including the furniture in the suit property or starting any hotel or any business activity therein.
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> 3. The record and proceedings in this suit are transferred to the Special Court under the MPID Act along with the statements of accounts of the plaintiff in Bombay Mercantile Co.Op. Bank Ltd., Panvel Branch bearing account No.11490 opened on 15/5/97 and produced by the Branch Manager of the said Bank along with the zerox copies of all the

cheques issued from the said account in the year 2005 under the signature of defendant No.4 and receipts of Rs.18.75 lakhs of Zikar Virani and Mohd. Shah Khan and another receipt of Rs.15,000/- of Vijay Patil as also one cheque book of account No.11490 of the plaintiff."

. It is clear that the relief of appointment of Court Receiver has been declined and the underlined portion of the relief which has been granted was not prayed for at any time till the Notice of Motion was decided by the impugned order.

7. It is well settled that an interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in suit or proceeding as has been held by the Constitution Bench in the case of The State of Orissa v. Madan Gopal Rungta reported in **AIR 1952 SC 12**. It is equally well settled that the decision of a case cannot be based on the grounds outside the pleadings of the parties and it is the case pleaded that has to be found. With the amendment of the plaint the Court is not entitled to grant relief not asked for as has been held in the case of Messrs. Trojan and Co. v. RM. N.N. Nagappa Chettiar reported in **AIR 1953 SC**

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. Section 6(3) of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short "the MPID Act") provides for transfer of the cases pending as on the date of the Act came into force and when the said special legislation has provided for transfer of proceedings to the said Special Court, it is not permissible for the trial Court while dealing with an application filed under Order XXXIX Rules 1 and 2 of C.P.C. to transfer the proceedings of a Suit to the Special Court on the spacious ground of lifting the corporate veil. It cannot be disputed that by allowing the Notice of Motion, the learned Judge of the trial Court has in fact decided the main Suit except the prayer for appointment of Court Receiver and exercised the powers which are not available while dealing with the application filed under Order XXXIX Rules 1 and 2 of C.P.C., so far as underlined directions are concerned. On these grounds alone the impugned order is unsustainable.

8. In this appeal the learned Vacation Judge by his order dated 18/5/2005 permitted the appellants to

carry out the work of external painting, outdoor tiling and to store the cement gunny bags and new A.C. units with a clarification that such a relief will not create any equities or rights in favour of the appellants. By the subsequent order dated 6-6-2005 the order of transfer passed by the Court below was stayed and the said order continues as at present.

. The plaintiff i.e. M/s.Suman Resorts India Ltd. is a Company registered under the Companies Act, 1956 and its Directors are as under:

(1)	Shaikh Mukhtar Hussain	Chairman
(2)	Surendra M.Khandhar	Managing Director
(3)	Praful M. Khandhar	Director
(4)	Bharti S. Khandhar	Director

. There is another company by name Suman Motels Ltd. with the very same above mentioned Directors and their respective status.

. On 17-4-1997 an amount of Rs.17 lakhs was paid by the Managing Director of Suman Motels Ltd. (so called sister concern of the plaintiff) to the defendant no.1 and subsequently on 25-6-1997 a Memorandum of Understanding (MOU) was signed between the Defendant No.1 as the first party and plaintiff as the second party purchaser. By the said MOU the Defendant No.1 agreed to sell and the plaintiff agreed to purchase the suit property for an amount of Rs.287 lakhs payable as mentioned therein. The suit property as described in the Schedule to the Plaint is Hotel building and surrounding property of Span Hill Resorts Ltd. situated at F.O.No.59, Sub-Plot No.1 & 2 of TPS No.1 of Tungrali on Survey No.118/1A, Sakhar Danda, Lonavala in Maval Taluka of Pune district. After payment of Rs.17 lakhs at the time of MOU it was agreed that the balance amount of Rs.270 lakhs was to be paid in 18 equal monthly instalments of Rs.15,00,000/- each commencing from the month of July 1997 and accordingly by September 1998 an amount of Rs.257 lakhs out of the said balance amount came to be paid by the plaintiff to Defendant No.1 - original owners of the suit property. On 27-6-1997 a supplementary agreement came to be entered into between the plaintiff and the

defendant no.1 under which ten out of 24 rooms of the hotel were agreed to be exclusively used by the plaintiff for its members upon payment of proportionate expenses for its use. The plaintiff purportedly received the possession of the suit property on 19-9-1998 as per the possession letter at Exhibit-C to the plaint. Thereafter the plaintiff entered into a conducting agreement on 4-12-2001 with the Defendant no.2.

9. Though an amount of Rs.257 lakhs was received by Defendant No.1, the sale transaction by registering the sale deed was not completed. Letters were exchanged between the Solicitors of the respective companies and such letter is dated 5th July 2000 addressed by the Defendant No.1 to the plaintiff followed by reminder dated 11th August 2000 calling upon the plaintiff to pay the remaining amount so as to execute the conveyance. In addition an amount of Rs.25 lakhs was claimed by way of maintenance charges as it was agreed between the parties. The last such reminder is dated 18th December 2001. Till the end of December 2003 nothing further progressed between the parties and a public notice came to be published in the local newspapers

at Lonavala and Pune on or about 12th January 2004 by Shri Vilol Khaladkar - an Advocate at Pune. By the said public notice objections were invited to the proposed purchase. At this stage the Defendant No.2, conductor of the hotel, filed a civil suit on 19/1/2004 in the Court at Maval in Pune district and obtained an ex-parte order of ad-interim injunction. After about 11 months the Defendant No.1 sold the suit property to Defendant No.3 by a registered agreement dated 22-12-2004 and the plaintiff - company is a consenting party no.1 and defendant no.2 is the consenting party no.2 to the said agreement which has been registered at Maval. There is no dispute between the parties that consequent to the said transaction the defendant no.3 received the possession of the suit property from the plaintiff and as at present defendant no.3 is in possession of the said entire property.

10. The plaintiff claimed before the trial Court that it was kept in dark regarding the transaction between the defendant no.1 and defendant no.3 and it was not aware of the public notice issued in January 2004. The consent given on its behalf was given by defendant no.4 who did not have an authority in terms

of a Board Resolution passed prior to 22-12-2004. The Defendant No.1 joined hands with defendant no.4 and in collusion sold the property to defendant no.3 for a paltry sum of Rs.77.50 lakhs. It is alleged that the transaction between the defendant no.1 and defendant no.3 is fake, fraudulent and is not a bona fide transaction. The property which was sought to be purchased by the plaintiff for Rs.287 lakhs has been sold by the defendant no.1 to defendant no.3 for a meagre sum of Rs.77.50 lakhs and this itself shows that the transaction is not genuine and is a moonshine one. The plaintiff had already parted with a huge sum of Rs.257 lakhs and it was always ready and willing to pay the balance amount of Rs.30 lakhs but it was the defendant no.1 who avoided execution of the sale deed in spite of the fact that the drafts of the proposed sale deed were circulated and exchanged between the respective solicitors. It is further pointed out that out of an amount of Rs.77.50 lakhs, Rs.20 lakhs have been paid to the defendant no.2 to compromise the suit filed by it and the balance amount of Rs.57.50 lakhs was allegedly paid to the plaintiff. There is no dispute that the defendant no.1 has not received any consideration from the sale transaction of 22nd December 2004 and

this is one more reason for the plaintiff to allege that the said transaction is not genuine and bona fide. As per the plaintiff the amount of Rs.57.50 lakhs purportedly remitted by the defendant no.3 in the name of the plaintiff has been siphoned off surreptitiously by the defendant no.4 and it has lost the said amount as well as the earlier payment of Rs.257 lakhs made to the defendant no.1. The Managing Director of the plaintiff, therefore, filed the instant suit to protect its financial and business interests, claims the plaintiff.

11. In the replies filed by the respective parties it was sought to be demonstrated that on account of failure of the plaintiff due to its precarious financial conditions, the MOU dated 25-6-1997 could not be acted upon so as to complete the sale transaction and in spite of several reminders the plaintiff could not take any steps for execution of the sale deed and its registration. In the mean while the property and more particularly the hotel rooms, swimming pool and furniture etc. had deteriorated to a great extent. The running business which was handed over to the plaintiff pursuant to the MOU had come to a stand still and the hotel was

non-operative. The defendant no.4 placed before the trial Court an extract of the alleged Board Resolution dated 4/9/2003 whereby he was authorised on behalf of the plaintiff-company to sign as a consenting party for the sale of the said property.

The plaintiff has disputed the said resolution.

. The defendant no.3 on its part claimed that it had taken all reasonable steps before it purchased the suit property and the consideration of Rs.77.50 lakhs was as per the prevailing market price. The newspapers in which the public notice issued by it appeared had wide circulation and the plaintiff did not object to the proposed transaction. On the other hand the plaintiff was fully aware of the said proposal and the defendant no.4, the Chairman of the plaintiff company at the relevant time, claimed all along that he was duly authorised to sign as a consenting party on behalf of the plaintiff no.1. The consideration of Rs.77.50 lakhs has already been paid and thus it has discharged all its obligations and has been put in possession of the suit property. Due to the inter se disputes between Suman Group of companies i.e. the plaintiff on one hand and Suman Motels Ltd. on the other hand, they cannot throttle

its business and the plaintiff cannot seek any injunction in respect of the suit property unless there is a challenge to the sale deed registered on 22-12-2004. So far as the allegations of collusion on its part or being a party in any way to the alleged collusion between defendant no.1 and defendant no.4 is concerned, it has been stated that the plaintiff cannot raise such allegations when there was a time gap of about 11 months between the public notice and the registration of sale deed. The plaintiff could not make out a prima facie case for injunction prayed for and, therefore, the order of injunction requires to be set aside. It is further submitted that the trial Court acted without jurisdiction to transfer the suit proceedings to the MPID Court and it committed a manifest error in law by deciding the notice of motion without deciding the preliminary point of jurisdiction.

. The defendant no.1 on its part contended that it was helpless on account of the total inaction on the part of the plaintiff for about four years and it believed that the value of the suit property had decreased substantially and to get rid of its legal liabilities on various counts it decided to sell the

property to a third party. It is also pointed out that the plaintiff could not pay the property taxes and other municipal dues and the defendant no.1 went on receiving notices for various statutory defaults. It is also stated that on account of failure to comply with certain provisions of the Companies Act, 1956, none of the Directors of the plaintiff-company hold their respective status as Directors or the Managing Director as at present, and, therefore, they have no locus standi in the eyes of law to initiate any legal proceedings on behalf of the company.

12. The Defendant Nos.3 and 4 in their replies before the trial Court have specifically taken the point of territorial and pecuniary jurisdiction to entertain the suit. The defendant no.3 in its reply in para 2 raised the said question in the following words:

> "2. This Defendant respectfully submits that this Hon'ble Court has no jurisdiction to try and entertain this suit against this Defendant:
>
> (a) Admittedly, this Defendant are having

their registered office at Pune and they carry on business at Pune and Lonavala. The suit property in respect of which the alleged relief is sought is situated at Tungrali Village, Taluka Maval, Lonavala Dist. Pune. Therefore, this Hon'ble Court has no territorial jurisdiction to try and entertain the present suit. It is only the District Court in Pune and/or Lonavala alone will have jurisdiction to try the present suit. No cause of action is also alleged to have arisen against this Defendant in Mumbai.

(b) The suit property, on Plaintiffs own admission is of the value of Rs.77,50,000/-. The subject matter of the suit is the said memorandum of Understanding dated 25-6-1997 (Exhibit "A" to the Plaint) on the basis of which the present suit is filed is of the value of Rs.2,87,00,000/- (Rupees Two crores eighty seven lacs only). Hence, this Hon'ble Court has also no pecuniary jurisdiction to try and entertain the suit.

It is submitted that the issue of jurisdiction

be framed and determined as preliminary issue under provisions of Sec. 9A of the Code of Civil Procedure."

. Perusal of the impugned order shows that the issue of jurisdiction has not been framed and decided before the Notice of Motion was allowed. The learned counsel for the defendants rightly relied upon the decisions of the Division Bench of this Court in this regard in the case of Meher Singh v. Deepak Sawhni & anr. reported in **1998 (3) Mh.L.J. 940** and in the case of ICICI Ltd. v. Sri Durga Bansal Fertilizers Ltd. reported in **1999 (3) Mh.L.J. 20**.

. The suit property is located at Lonavala in Pune district. The sale deed has been registered at Maval in Pune district, and the defendant No.3 is also located at Pune. The sale deed consideration is Rs.77,50,000/- whereas the MOU consideration is Rs.2,87,00,000/-. Thus both the points of jurisdiction i.e. territorial and pecuniary, as raised by the defendants, were required to be framed and decided before deciding the notice of motion by

the impugned order. This is a fatal error in law committed by the Court below and, therefore, the impugned order is indefensible on this ground as well.

13. The plaintiff contends that the MOU dated 25-6-1997 was a subject matter of arbitral proceedings which had commenced during the pendency of the suit and subsequently the defendant no.1 withdrew from the said proceedings. Consequently the plaintiffs have submitted an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 and the same is pending before this Court. This indicates that as at present the said MOU is not a subject matter of valid arbitral proceedings and in any case the defendant no.3 was not a party to the MOU. The plaintiffs filed S.C. Suit No.1248 of 2005 mainly on the ground that the sale transaction between the defendant no.1 and defendant no.3 resulting into the sale deed dated 22-12-2004 was behind its back and the consent purportedly given by the plaintiff for the said transaction is not by the plaintiff but by defendant no.4 who had no authority to sign as a consenting party on behalf of the plaintiff. The defendant no.4, on the other hand,

contended that he had the authority on the basis of the resolution purportedly passed by the plaintiff-company as referred to hereinabove. In the impugned order the trial Court has recorded a finding that the said resolution is fake. It was not permissible for the trial Court to record such a sweeping finding unless the parties proceeded to adduce oral and documentary evidence which could not be done while deciding the notice of motion. The plaintiff also stated that it was not aware of the transaction even though the public notice was issued and published on 12-1-2004. For the purpose of prima facie conclusions the said contention does not appear to be acceptable. Along with the affidavit-in-reply filed by the defendant no.1, a copy of the reply dated 11-2-2004 sent on behalf of the plaintiff-company by its Solicitors has been placed on record and this reply is to the public notice issued by Shri Vilol Khaladkar - Advocate at Pune. There is yet another letter dated 10-11-2004 addressed by the plaintiff to defendant no.1 informing the defendant no.1 that the plaintiff had decided to proceed to convey the property directly to the defendant no.3. These letters including the reply dated 17-11-2004 received by the plaintiff from

defendant no.1 are required to be examined on the basis of the evidence that the parties may lead before the trial Court but, prima facie, it cannot be accepted today that the defendant no.4 had no authority to write letters on behalf of the plaintiff. Such an issue can be decided only on the basis of the evidence that may be recorded during the trial of the suit and the prima facie conclusion recorded by the trial Court that the defendant no.4 acted without authority on behalf of the plaintiff cannot be accepted.

14. By the trial Court's own observations, the entire amount of Rs.2,57,00,000/- received by the defendant no.1 in discharge of the obligation under the MOU, has not been paid by the plaintiff. Under such circumstances whether the plaintiff can lay a suit and challenge the transaction between the defendant no.1 and defendant no.3 is also an issue which will have to be decided during the trial of the suit. If the plaintiff did not pay the said amount then naturally a question in that case is who has paid on its behalf. There is some evidence to indicate that the amount was paid by M/s.Suman Motels Ltd., another company of Suman Group. Neither the

plaintiff nor any of the defendants are impleaded as a party in the proceedings pending under the POTA Act against Suman Motels Ltd. Prima facie, it appears that S.C. Suit No.1248 of 2005 has been instituted on account of the differences between the defendant no.4 and other directors of the plaintiff-company and in such a suit the defendant no.3 cannot be allowed to be a victim by way of an interlocutory order on the lines of the impugned order passed by the trial Court. If the directors of the plaintiff-company are at loggerheads, the disputes inter se can also be resolved by taking resort to the remedy available to them under the Companies Act, 1956 as such disputes touch upon the management and administration of a registered company under the said Act. These are all issues which have to be gone into during the trial of the pending suit. The reasoning given by the trial Court in support of the impugned order is indefensible on any count and by the impugned order almost the main suit has been virtually decided.

15. Nonetheless, it appears from the record that a property which was agreed to be sold for an amount of Rs.2,87,00,000/- has been sold by the defendant no.1 for an amount of Rs.77,50,000/- to defendant no.3.

It is also alleged by the plaintiff that the amount of Rs.57,50,000/- received from defendant no.3 by the plaintiff has been siphoned off by defendant no.4 though the said cheque was remitted in the account of the plaintiff-company. Such an allegation will also have to be examined on the basis of the evidence that the parties may place before the trial Court during the hearing of the suit and even if the account extract submitted before the trial Court by the concerned has been dealt with in the impugned order, it would not be safe to accept the contentions of the plaintiff that the amount has been siphoned off by the defendant no.4 for a purpose other than the disbursement on behalf of the plaintiff-company. Such an issue cannot be decided at an interlocutory stage and without allowing the parties to lead evidence. But a limited protection will be justified on the face of the allegations made by the plaintiff against defendant No.4. If the plaintiff proves that it had paid the entire amount of Rs.2,57,00,000/- to defendant no.1, its interests on the suit property do require some protection from further transfers.

16. In the premises this appeal succeeds partly. The impugned order is hereby quashed and set aside.

The defendant no.3 which is in possession of the suit property as at present is hereby directed not to alienate / transfer the suit property by any means to a third party during the pendency of the suit and any investments made by defendant no.3 for the development / improvisation of the property including its furnishing, beautification and decoration etc. shall be at the risk of the defendant no.3 and subject to the final decision in the pending suit.

The trial of S.C. Suit No.1248 of 2005 is hereby expedited.

(B.H.MARLAPALLE,J.)